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ABSTRACT

This factsheet discusses England's 1988 Education Reform Act's position regarding the right of every student under 20 years of age to full-time education, regardless of disability or learning difficulty. Special emphasis is put on the responsibilities local education agencies face as a result. Summaries of other relevant legislation are also provided to help students and advocates make effective requests for education from 16 to 19 years of age. Such questions as school versus college, fees, grants and benefits, and training centers are also discussed briefly. (PB)

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THE CENTRE FOR STUDIES ON
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FACTSHEET

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Summary

- This updated factsheet gives the latest position on the rights of all students to full-time education up to 19 years, regardless of disability or difficulty in learning.
- Confirmation of this right in the 1988 Education Reform Act should end once and for all any misunderstanding by local education authorities (LEAs) about their duty to make appropriate provision after the statutory school leaving age of 16.
- Details of the relevant sections of the new law together with easy-to-read summaries of other important legislation, give students and their advocates the information they need to make requests for education from 16-19.
- The factsheet also refers to a survey showing some recent improvements in LEA provision and gives a brief guide to the type of further education provision now becoming available.

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16-19: The Right to Further Education

Introduction

All young people have the right to full-time education up to 19 years, including students with disabilities or those who experience difficulties in learning.

Despite the legal duty on local education authorities (LEAs) to make such provision on request after the statutory school leaving age of 16, many have failed to do so, claiming that no clear duty exists.

The most recent confirmation of an LEA's duty is given in the 1988 Education Reform Act (ERA) (see over). This should end once and for all any misunderstanding about the rights of all young people to have appropriate full-time education up to 19 years, regardless of disability or difficulty.

Background

In 1980 the Macfarlane report estimated that there were 50,000 students with disabilities or difficulties in learning between 16-19, and yet there were only 5,000 places available in further education for them.

A year later a survey by the Advisory Centre for Education found that sixty per cent of LEAs were failing to make provision for these students and a year after that, in 1982, a survey by the National Union of Teachers led to similar findings.

The most recent research by the National Bureau for Students with Disabilities shows some improvements in opportunities.

ERA makes clear the duty on LEAs to provide further education for young people over 16 and under 19.

The new Act also makes explicit that in fulfilling their duty LEAs should 'have regard' to the needs of people with disabilities or those who experience difficulties in learning.

The Legal Position

- **The 1944 Education Act** is the basic legislation giving young people from 16-19 the right to full-time education. Section 8(1)(b) states that LEAs should make available sufficient full-time

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Mainstream education for all children with disabilities or difficulties in learning

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education suitable for senior pupils. Section 114 defines these pupils as aged between 12 and 19. The education must be in school or college. (The Authority can decide which). For students over 19 years educational provision is discretionary.

● **The 1970 Education Act** transferred to LEAs the final group of children and young people from the responsibility of health authorities. This ended the concept of 'ineducable' for those with severe learning difficulties. From 1971, when this Act came into force, the duty to provide full-time education up to 19 therefore applied to *all* young people.

● **The 1981 Education Act** covering the education of children with special educational needs does not affect this duty in any way. But it does mean that if young people with disabilities or difficulties are provided with post-16 education in schools, then the additional duties under the 1981 Act to identify, assess and provide for their needs in an integrated setting, apply right up to the age of 19.

The 1981 Act's procedures still do *not* apply if the young person is in college. In this situation, LEAs need no longer maintain any statement of special educational needs — although authorities may pass the statement on to a college for information.

● **The 1986 Disabled Persons Act** (Sections 5 and 6) requires LEAs to inform Social Service Departments eight months before the dates when young people with disabilities or difficulties are expected to leave full time education, and to keep those dates under review. Social Services are required to carry out a multi-disciplinary assessment within five months of being told by the LEA, unless the student or their guardian or parent does not want it.

● **The 1988 Education Reform Act** re-imposes a duty on LEAs to provide adequate further education. In addition the Act emphasises the obligation on LEAs to take into account people with disabilities and/or those who experience difficulties in learning.

The Act states: 'It shall be the duty of every local education authority to secure the provision for their area of adequate facilities for further education.' Section 120(2)41.-(1). 'In fulfilling that duty a local education authority shall also have regard to the requirements of persons over compulsory school age who have learning difficulties.' Section 120(2)(10).

The Importance of Provision

All students have the right to an appropriate education. Often students with disabilities or difficulties will benefit most from an extended education precisely because their learning problems mean they may take longer to reap the rewards of their earlier schooling. The Warnock Report on special educational needs (1978) warned that without improvements in continued education, all earlier efforts in schools might come to nothing.

It is because further education is even more important for students with disabilities or difficulties that CSIE, along with other organisations, has urged the Government to raise the age for guaranteed full-time education for this group to 23 years. People who become disabled later in life should also have automatic access to three years education as a basic right and necessity in any adjustment process. CSIE strongly recommends that all students take the opportunity of exercising their full *educational* rights, before moving on to other options such as training.

Changes and Improvements

A survey by the National Bureau for Students with Disabilities published in 1987 showed that two-thirds of colleges of higher and further education and polytechnics in England, now make at least some effort to accommodate the needs of students with disabilities or

Education Reform Act 1988

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(10) In fulfilling that duty a local education authority shall also have regard to the requirements of persons over compulsory school age who have learning difficulties.

those who experience difficulties in learning. It found that opportunities had improved during the last ten years, although a person's age, degree of disability, and which area they came from, still played a decisive part in determining whether a place was available.

The Bureau points out that local further education and technical colleges are in the forefront of provision — and in many cases do not require entry qualifications.

The following is a brief summary of the kind of opportunities and initiatives now becoming available.

- Activities specially designed for students with disabilities or difficulties range from 'education for living' courses for people with significant disabilities/difficulties, to work preparation courses for students whose problems are less severe.
- Many young people continue their studies in residential specialist further education colleges.
- Opportunities are available to take part in ordinary courses in local further education colleges and also in universities and polytechnics. These include preparation for General Certificate of Secondary Education (GCSE) examinations, and courses in a variety of vocational subjects such as office skills, hairdressing, horticulture, engineering, and catering leading to recognised qualifications.
- Colleges have also made progress with integration by welcoming people with disabilities or difficulties in learning onto their new breed of courses for young people who need further time to master basic skills before embarking on a vocational course. These courses are known as Technical and Vocational Education Initiative (TVEI) or the Certificate in Pre-Vocational Education (CPVE).
- Many students with disabilities or difficulties go on to the two-year Youth Training Scheme (YTS) when they leave school. The Training Commission has given positive incentives to support this group of students by allowing them to stay in full-time education up to 21 years before joining YTS, extending the two-year programme by a minimum of six months, and by loaning aids and equipment and giving financial help.
- Practical support varies but may include access to special transport and medical staff, extra time for examinations, specialist teachers and resources, and personal care staff. Many colleges have made adaptions to their buildings to improve access, although far too few have made all their buildings accessible.
- Part-time courses for students with disabilities or difficulties *over* 19 are becoming more widely available. Many colleges set up special links with day centres and adult training centres.
- The Department of Education and Science has promoted staff training in colleges of further education to support integration.

School or College?

While LEAs have a duty to ensure that provision is made for all 16-19 year old students who request education beyond their statutory school leaving age, there is no guarantee as to where the education will take place. As well as being in either school or college, it could be in a neighbouring LEA rather than a student's home authority.

A comprehensive school offering post-16 education should have no grounds for refusing a student unless it can prove that it cannot offer an education suitable to the student's age, ability and aptitude (1944 Education Act (Section 8). In that case the authority has to offer education somewhere else.

Although protection under the 1981 Act does not apply in college, a reasonable authority will ensure that young people's special educational needs are adequately met in this non-school setting.

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Statutory Re-assessment

The 1981 Act imposed a duty on LEAs to carry out a full-scale re-assessment for all young people with statements between the age of 12½ and 14½. CSIE believes this provides an ideal opportunity to plan appropriate education up to 19.

Fees

No fees can be charged for education in schools (1944 Education Act (Section 61)). However, LEAs are legally entitled to make some reasonable charge in colleges, although they have tended not to charge for college courses which are the same as local school courses.

Grants and Benefits

Except at university level the availability of grants is very limited for all students. Young people with disabilities or difficulties may be entitled to benefits including severe disability allowance and income support, depending on the degree of disability and the type of education provided. Entitlement to mobility allowance and attendance allowance is not usually affected by attending college.

Training Centres

The duty to provide full-time education is not met by the provision of training courses in adult training centres or on YTS. This training may be appropriate in some cases but its provision does not remove the legal obligation to provide education up to 19 if this is preferred by the student and requested of the LEA.

Speak Up

Some LEAs argue that they make little or only qualified provision beyond 16 for students with disabilities or difficulties because they are not asked. CSIE does not accept this as a justifiable defence for no provision. It believes the onus is on education authorities and their schools to create an environment in which parents and students are encouraged to use the education system to the fullest.

It is vital that students, parents and advocates speak up and make clear that they understand their basic rights and that they expect LEAs to meet their responsibilities for education beyond the age of 16.

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What To Do

The request for post-16 education for a student with disabilities or those who experience difficulties in learning should be made well before the student's 16th birthday.

As pointed out above the 1981 Act's statutory re-assessment at 12½-14½ years of age is not too early to state what is wanted. After discussions with the school as to what is available locally, a formal request in writing should be made to the local education office (keeping copies of all correspondence). Specialist careers officers are available to give advice to students with disabilities or difficulties.

If the request for post-16 education is refused, for whatever reason, then the authority should be asked to put their response in writing. Students, parents, or the person acting on behalf of the student can make a formal complaint to the Secretary of State for Education and Science under Sections 68 and 99 of the 1944 Act, asking him or her to intervene and over-rule the LEA's decision.

To our knowledge the Secretary of State has never failed to support such a complaint and has always instructed an authority to make appropriate provision.

Further Information

For more information on post-16 education contact the Further Education Officer in your own LEA, and:

Advisory Centre for Education (ACE), 18, Victoria Park Square, London E2 9PB. (01-980 4596)

National Bureau for Students with Disabilities, 336, Brixton Road, London SW9 7AA. (01-274 0565).

Department of Education and Science (DES).

For education in schools: Special Education Division, DES, Elizabeth House, York Road, London SE1 7PH. (01-934 0900).

For education in colleges: Further Education Division at the same address.

Welsh Office, Special Education Division, Education Department, Crown Buildings, Cathays Park, Cardiff CF1 3NQ. (0222-823347)

Useful publications

Catching Up?. Provision for Students with Special Educational Needs in Further and Higher Education. National Bureau for Students with Disabilities.

Learning Options. Guidelines on provision of further and continuing education for people with disabilities. The Prince of Wales' Advisory Group on Disability, 8 Bedford Row, London WC1R 4BA. (01-430 0558).

For more information about the 1981 Education Act, integration in practice, the work of the **Centre for Studies on Integration in Education (CSIE)** and a full list of publications, contact: **CSIE,** 4th floor, 415, Edgware Road, London, NW2 6NB (01-452 8642).

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